



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	<b>04/13/00</b>	Bill No:	<b>AB 2898</b>
Tax:	<b>Business Taxes Property Taxes</b>	Author:	<b>Assembly Revenue and Taxation Committee</b>
Board Position:	<b>Support – Board-sponsored</b>	Related Bills:	

### **BILL SUMMARY:**

This bill contains Board of Equalization-sponsored provisions that would strengthen and update the California Taxpayers' Bill of Rights for the taxes and fees administered by the Board. Specifically, for the sales and use tax program, the special taxes and fees program, the Private Railroad Car Tax program, and the Timber Yield Tax program, the bill would do the following:

- Authorize the Board to grant equitable relief to innocent spouses under procedures prescribed by the Board if the facts and circumstances warrant (§6456, et al.)
- Authorize the Board to establish criteria to provide relief of the late payment penalty in a more efficient manner (§6592, et al.)
- Provide relief to a taxpayer whose employer withheld delinquent sales or use tax from the taxpayer's pay, but failed to remit the amounts to the Board (§6704, et al.)
- Require the Board to provide notice to purchasers who have incurred a use tax liability, as specified, of the Board's authorization to enter into installment payment agreements (§6832.6)
- Prohibit the disclosure of confidential taxpayer information by tax preparers (§7056.6, et al.)
- Change the effective date for which reimbursement of fees and expenses may be awarded so that taxpayers may claim reimbursement commencing from the date the notice of determination, jeopardy determination, or denial of claim for refund is issued (§7091, et al.)

The bill additionally would make the following changes to the Special Taxes, the Private Railroad Car Tax, and the Timber Yield Tax programs:

- Suspend the statute of limitations on filing refund claims during periods of disability,
- Require the Board to provide annual statements summarizing the payment and liability information to taxpayers who have entered into installment payment agreements.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

Background:

The Harris-Katz California Taxpayers' Bill of Rights was enacted in 1988 (Ch. 1574), effective January 1, 1989, to place certain guarantees in the California Sales and Use Tax Law to ensure that the rights, privacy, and property of California taxpayers are adequately protected during the process of the assessment and collection of taxes. The Katz-Harris Taxpayers' Bill of Rights, also enacted in 1988, placed similar guarantees in the California Personal Income Tax Law and the Bank and Corporation Tax Law. Conforming taxpayer rights were added to the Board-administered Special Taxes programs in 1992 by Chapter 438.

On July 30, 1996, Congress enacted the federal Taxpayer Bill of Rights 2 to provide an additional set of taxpayer protections under the federal income tax laws. As a conformity measure, the Franchise Tax Board sponsored AB 713 (Ch. 600, Stats. 1997) to conform many of its bill of rights provisions to the 1996 federal changes.

In 1998, the Board sponsored Assembly Bill 821 (Ch. 612, Takasugi) to conform California sales and use tax laws to the Franchise Tax Board's AB 713. Effective January 1, 1999, AB 821 expanded, modified and supplemented the Katz-Harris Taxpayers' Bill of Rights Act with respect to relief of interest, installment payment agreements, interest on erroneous refunds, education and information programs, reimbursement of certain fees and expenses, return of levied property, and release of liens to facilitate collection or when it is in the best interest of the state and taxpayer.

Also in 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act of 1998. In addition to providing for a massive reorganization of IRS and the way it does business, this Act included various taxpayer rights protections, including greater relief of liability for innocent spouses, statute of limitations relief for financially disabled taxpayers, increased tax agency notification requirements, and many others.

In 1999, California conformed its Sales and Use Tax and Personal Income and Bank and Corporation Tax Laws to several of the taxpayer rights provisions in the IRS Act through the enactment of AB 1638 (Chapter 929, Statutes of 1999) and SB 94 (Chapter 931, Statutes of 1999).

**ANALYSIS:****Authorize the Board to grant equitable relief to innocent spouses under procedures prescribed by the Board if the facts and circumstances warrant**

(Sections 6456, 7658.2, 8756, 11274, 30189, 32258, 38406, 40066, 41057, 43161, 45158, 46159, 50112.6, 55047, 60213)

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Current law:

Under Section 6456 of the Sales and Use Tax Law, the Board is authorized to relieve an innocent spouse of liability for unpaid or understated liabilities attributable to the other spouse. To be relieved of liability, the spouse claiming relief must establish that he or she did not know of, and had no reason to know of, that understatement, or nonpayment. Whether or not the spouse claiming relief significantly benefited directly or indirectly from the understatement or nonpayment of the liability is also required to be taken into account when considering relief of liability.

Comment:

This provision, which conforms with both the innocent spouse provisions in the IRS Restructuring and Reform Act of 1998 and the Franchise Tax Board's SB 94 (Ch. 931, Stats. 1999), would authorize the Board to relieve an innocent spouse under procedures prescribed by the Board, if, in light of all the facts and circumstances, it is inequitable to hold that spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not otherwise available.

**Authorize the Board to establish criteria to provide  
relief of the late payment penalty in a more efficient manner**

(Sections 6592, 7657, 8877, 11597, 30282, 32255, 38452, 40102,  
41096, 43157, 45155, 46156, 50112.2, 55044, 60209)

Current Law:

Under Section 6592 of the Sales and Use Tax Law, and similar statutes in the Board's special taxes and fees program, the Board is authorized to relieve persons of the penalty imposed for a person's failure to make a timely return or payment, when the Board finds that the failure was due to a reasonable cause. To be relieved of the penalty, the law requires that the person seeking relief file a statement under penalty of perjury setting forth the facts upon which his or her claim for relief is based.

Comment:

This provision would enable the Board to establish criteria that would allow for a more efficient process to provide relief of penalty, by for example, eliminating the requisite statement under penalty of perjury from the person seeking relief under the established criteria.

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**Provide relief to a taxpayer whose employer withheld delinquent taxes or fees from the taxpayer's pay, but failed to remit the amounts to the Board**

(Sections 6704, 8958, 11453, 30316, 32387.5, 38503.5, 40156, 41123.6, 43444.3, 45605.5, 46407, 50136.5, 55205.5, 60408)

Current Law:

Under Section 6703 of the Sales and Use Tax Law, and similar statutes in the Board's other tax and fee programs, if a retailer or other person liable for the tax is delinquent in his or her payment of amounts due, the Board is authorized to take administrative collection action. One such action is the issuance of earnings withholding orders for taxes or fees pursuant to the Code of Civil Procedure. These orders require employers to withhold delinquent taxes or fees from an employee's earnings and remit the withheld amount to the Board. This situation arises when the taxpayer, at the time of this action, is employed by another, as for example, a purchaser of an aircraft who is delinquent in his or her payment of use tax to the Board. In cases where the employer fails to remit the withheld amount to the Board, the employee continues to remain liable to the Board for the amounts withheld and, other than obtaining a civil action against the employer, the Board has no authority to take administrative collection action against the employer. Under existing law, the Board has no authority to credit the account of the tax or feepayer for the amount the employer withheld and failed to remit. In addition, the Board does not have authority to stop collection action against the tax or feepayer.

Comment:

This provision, which is consistent with the authority granted to the Franchise Tax Board by SB 94 (Ch. 931, Stats. 1999), would provide relief to a tax or feepayer whose employer withheld delinquent taxes or fees from the tax or feepayer's pay pursuant to an earnings withholding order, but failed to remit the amounts to the Board. Specifically, this provision would:

- Eliminate the tax or feepayer's liability for the unremitted amount by allowing the Board to credit the taxpayer's account for the unremitted amount.
- Hold the employer liable for the unremitted amount by allowing the Board to administratively assess an amount equal to the unremitted amount against the employer.
- Stop collection action against the tax or feepayer for the amount.

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**Require the Board to provide notice to purchasers who have incurred a use tax liability of the Board's authority to enter into installment payment agreements**

(Section 6832.6)

Current Law:

Under existing law, as added by AB 821 (Ch. 612, Stats. 1998), the Board is authorized to enter into installment payment arrangements with taxpayers when they are financially unable to pay their liabilities in full. Current law does not require that the Board notify taxpayers of the Board's authorization to enter into these agreements.

Under current law, purchasers of used vehicles, vessels, aircraft from private parties, and purchasers of goods from foreign countries are generally held liable for the use tax. The Board has an organized program of collecting the use tax directly from California consumers with respect to these purchases.

This consumer use tax collection program is feasible because substantial sales prices are generally involved and a source of information is available upon which to base the use tax assessments. Information with respect to aircraft purchases is obtained from the Federal Aviation Administration. Information with respect to vessel purchases is obtained from the Department of Motor Vehicles and the United States Coast Guard. Information with respect to vehicle purchases is obtained from the Department of Motor Vehicles, which also is authorized to act as an agent of the Board and collect use tax from the purchaser at the time of registration of the vehicle. Information with respect to foreign purchases is obtained from the United States Customs Service declarations completed by returning travelers at ports of entry.

Comment:

This provision would require the Board to provide consumers with information concerning the Board's authorization to enter into installment payment agreements when the Board mails a use tax return, a notice of determination, or a notice of redetermination for payment of use tax. Because use tax liabilities on these transactions are often unanticipated by the consumer, providing consumers with this information from the outset could greatly assist some taxpayers in knowing that they have an option to satisfy their use tax liabilities through a payment plan. Interest would accrue on any portion of the unpaid tax amount over the life of the installment payment agreement (currently at a rate of 11 percent). As such, probably only those consumers that truly cannot afford to pay the liability in full would opt to enter into such agreements.

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**Prohibit the disclosure of confidential taxpayer information by tax preparers**

(Sections 7056.6, 9255.2, 11656, 32455.5, 38707, 40176,  
41132, 43506, 45855.5, 46606, 50155.5, 60609.5)

**Current Law:**

Among the inalienable personal rights listed in Article I of the California Constitution, is the right to privacy. Consistent with this provision, current law prohibits the Board and its employees from divulging confidential information about the business affairs of taxpayers registered with the Board. Any violation of these laws is a misdemeanor, punishable by a fine of not less than \$1,000 and not more than \$5,000, or imprisonment not to exceed one year in the county jail, or both a fine and imprisonment, at the discretion of the court. Current law does not prohibit tax preparers from divulging tax or fee information relating to taxes and fees collected by the Board.

**Comment:**

This provision, which is consistent with Section 7216 of the United States Code for purposes of the Federal Income Tax Law, and Section 17530.5 of the Business and Professions Code for purposes of federal or state income tax returns, would make it a misdemeanor for any person who is engaged in the business of preparing or providing services in connection with the preparation of Board-administered tax or fee returns, to disclose any information furnished to him or her for, or in connection with the preparation of any such return, or to use any such information for any purpose other than to prepare, or assist in preparing, any such return.

**Change the effective date for which  
reimbursement of fees and expenses may be awarded**

(Sections 7091, 8269, 9269, 11657, 30458.9, 32469, 38708, 40209,  
41169, 43520, 45865, 46620, 50156.9, 55330, 60630)

**Current Law:**

Under current law, a taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the Board if the Board finds that the action taken by the Board staff was unreasonable. Under existing provisions, the amount of reimbursed fees and expenses is limited to the fees and expenses incurred after the date of the filing of the petitions for redetermination and claims for refund.

**Comment:**

This provision, which conforms to the Franchise Tax Board's SB 94 (Ch. 931, Stats. 1999), would change the effective date from which reasonable fees and expenses may be granted, from the date the petition or claim for refund is *filed* to the date the notice of determination is *issued*.

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**Suspend the statute of limitations on  
filing refund claims during periods of disability**

(Sections 8128.1, 9152.1, 11553.5, 30362.1, 32402.1, 38602.5,  
40112.1, 41101.1, 43452.1, 45652.1, 46502.1, 50140.1, 55222.1, 60522.1)

**Current Law:**

Under both the IRS Restructuring and Reform Act of 1998 and the Sales and Use Tax Law, as added by AB 1638 (Stats. 1999, Ch. 929), a taxpayer is allowed equitable tolling of the statute of limitations for refund claims during any period in which the individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment expected to result in death or to last for a continuous period of not less than 12 months. However, tolling does not apply for periods in which the taxpayer's spouse or another person is authorized to act on the taxpayer's behalf on financial matters.

Current law specifies the period in which claims for refund are required to be filed for any overpayments. The Board's tax programs require a claim for refund to be filed no later than three years from the due date of the return (four years under the Private Railroad Car Tax Law), or six months from the date of the overpayment, whichever period expires later. Current law does not provide for equitable tolling under any circumstances.

**Comment:**

The Board's conformance to the Act would provide equitable relief for those taxpayers that qualify, and would not likely result in a significant increase in staff workload or loss in revenues.

**Require the Board to provide annual statements to  
taxpayers who have entered into installment payment agreements.**

(Sections 9033.5, 11253.5, 30354.5, 32389.5, 38504.5, 40167.5,  
41127.7, 43448.5, 45609.5, 46464.5, 50138.7, 55209.5, 60493.5)

Under both the IRS Restructuring and Reform Act of 1998 and the Sales and Use Tax Law, as added by AB 1638 (Stats. 1999, Ch. 929), the IRS and Board are required to provide an annual statement to every taxpayer with an installment agreement indicating the initial balance at the beginning of the year, the payments made during the year, and the remaining balance at the end of the year.

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AB 1638 also granted authorization to the Board to enter into installment payment agreements with taxpayers under the Special Taxes, Private Railroad Car Tax, and the Timber Yield Tax programs. Statutory conformance with the Act and the Sales and Use Tax Law would enhance the Board's services to taxpayers who have entered into these agreements by requiring the Board to provide clear explanations of accrued interest and penalties on their respective tax liabilities. It would also allow taxpayers to clearly track their remaining outstanding liabilities with the Board of Equalization.

Comments:

Although the Board intends to provide taxpayers with this type of information on their installment payment plans without a statutory requirement, it is necessary to add these provisions to the law in order to provide taxpayers with legal certainty. It should be noted that these provisions would not apply to taxes due under the Motor Vehicle Fuel License Tax Law, since those taxes are collected by the State Controller and not the Board.

**COST ESTIMATE:**

There would be no additional administrative costs associated with the workload of advising and answering inquiries from the public, and informing Board staff.

**REVENUE ESTIMATE:**

This measure would result in an insignificant decrease in revenues attributable to the provisions regarding 1) authorizing the Board to grant equitable relief to innocent spouses under procedures prescribed by the Board, 2) changing the effective date for which reimbursement of fees and expenses may be awarded, and 3) the tolling of the statute of limitations for periods of disability.

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